

JUL 1 2011

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK S. MUSZYNSKI,

Plaintiff - Appellant,

v.

D. L. RUNNELS; et al.,

Defendants - Appellees.

No. 10-15808

D.C. No. 2:04-cv-00082-JAM-
GGH

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted June 15, 2011**

Before: CANBY, O'SCANNLAIN, and FISHER, Circuit Judges.

Mark S. Muszynski, a California state prisoner, appeals pro se from the district court's order denying his motion for reconsideration following a settlement agreement in his 42 U.S.C. § 1983 action. To the extent we have jurisdiction, it is under 28 U.S.C. § 1291. We review for an abuse of discretion the denial of a

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

motion to reconsider. *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court did not abuse its discretion by denying Muszynski's motion for reconsideration under Fed. R. Civ. P. 59 because Muszynski did not present any newly discovered evidence, nor did he advance any other viable ground for relief. *See id.* at 1263; *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 212 (9th Cir. 1987) (evidence is not "newly discovered" if it was in the moving party's possession prior to judgment).

We lack jurisdiction to consider Muszynski's contentions concerning the underlying merits of this action because it was voluntarily dismissed without prejudice. *See Concha v. London*, 62 F.3d 1493, 1507 (9th Cir. 1995) (voluntary dismissal without prejudice is not appealable).

We deny Muszynski's request in his reply brief for appointment of counsel.

AFFIRMED.